

the sale of a residence and a new residence is purchased thereafter, the gain remaining after purchase of the new residence is taxable that year. 26 U.S.C. 1034(a).

F. Misrepresentations and Lack of Candor.

Moonbeam has made multiple misrepresentations and has demonstrated a lack of candor in statements, testimony and evidence presented concerning her financial qualifications. These all relate to Moonbeam's financial qualification and, as such, are encompassed within the added issues. "It is well settled that applicants may properly be disqualified for lying in hearing testimony in the absence of previous formal notification that findings will be made as to whether the testimony was deceitful." Maria M. Ochoa, (FCC 93-526), 8 FCC Rcd. __ (Comm. released December 28, 1993).

Moonbeam has engaged in the following misrepresentations or demonstrated a lack of candor:

(1) The June 30, 1993 financial statement -- Moonbeam submitted the balance sheet of Mary Constant dated June 30, 1993 in an effort to demonstrate her financial wherewithal at that time. The financial statement misrepresented her net worth. First it appears she had liquid assets of less than \$275,000, and not \$400,000 as claimed. See p. 20,21, supra. Secondly, her current liabilities were grossly understated. She failed to report a \$546,000 liability, crop loan, which was incurred just weeks prior, and she neglected to report \$51,319 of current liabilities associated with that obligation. See p. 21, supra.

Ms. Constant was also misleading and lacked candor regarding the crop loan. In direct testimony, she described the loan as a business loan that is "on the crop that is payable at harvest" (Tr. 329). Ms. Constant explained that the crop (grapes) was grown at her vineyard, that there was a contract to sell the grapes in place prior to the time the loan was obtained, and that the proceeds from the grapes were sufficient to liquidate the crop loan (Tr. 329). She claimed that the proceeds from the sale of the grapes was definitely sufficient to liquidate the crop loan (Tr. 330). Ms. Constant's testimony on direct, in other words, was intended to communicate that the loan was a liability which would shortly be paid off within the growing season and, therefore, was of no consequence. It was revealed on cross-examination, however, that the crop had already been harvested and sold, but that the loan was not paid off (Tr. 352). Ms. Constant testified, "It's been -- we've been paying it off -- we paid it -- we decided to pay it off monthly" (Tr. 352).

(2) Payment of legal fees -- At the hearing, Ms. Constant testified that she intended to pay Moonbeam's sizable (over \$30,000) outstanding legal bill in part from her income. However, in Moonbeam's August 30, 1993 response to financial documents requested by Willson, Moonbeam claims, "Moonbeam has never stated an intention to rely on the income of Mary Constant for funds to construct this station operate for three months or prosecute Moonbeam's application. To the contrary, Moonbeam has consistently maintained that it relies on assets held on account for Mary F. Constant at Alex Brown & Sons." (Tr. 386,387). See

Willson Motion to Compel filed September 13, 1993. As a result of this representation, Willson was denied his request for production of documents relating to Ms. Constant's income. When confronted with the sizable outstanding legal debt and the need to demonstrate how it would be paid, Ms. Constant then chose at hearing to state that she would use other sources, including her income. (Findings p. 6.)

Along a similar vein, Moonbeam represented in an Opposition to Motion to Compel it filed on September 21, 1993 to request for financial documents made by Willson that, "Prosecution expenses, if paid on an ongoing basis, are not relevant to a financial issue. Moonbeam has been paying its account with Haley, Bader & Potts on an ongoing basis" (Tr. 382). It turns out, however, that not only has Moonbeam not been paying its legal fees on an ongoing basis, but that as of October 30, 1993 it was in arrears over \$30,000. This amount represents more than 50 percent of the total billed Moonbeam. Furthermore, Moonbeam had not been current in payment of legal fees since November 1992. (Findings p. 6.)

(3) Liens -- Ms. Constant was the subject of an approximate \$15,000 lien filed against her residence for failure to pay taxes. This lien was never reported despite the significance of liens as obvious liabilities, having a direct bearing on an applicant's financial qualifications. Ms. Constant testified she was certain there were no other liens. This was not true. A mechanics lien naming Mary Constant as the responsible party was filed in June 1992. (Findings p. 8,9.)

(4) Ownership of Funds in the Alex Brown Accounts--

On direct examination, Ms. Constant testified that the funds in the Alex Brown accounts were inherited by her and were her funds alone (Tr. 315). They were not subject to community property. On cross-examination, however, it turned out that funds in at least one of the Alex Brown accounts were co-mingled with her husband's assets. Over \$125,000 in one account represented her husband's share of the proceeds from the sale of the Nicasio residence. (Findings p. 9.)

III. CONCLUSION.

Moonbeam has failed to meet its burden. Moonbeam was not financially qualified at the time it filed its application in November 1991 and Ms. Constant falsely certified the application. At that time, Moonbeam had two pending applications -- one for Eagle, Idaho, the other for Calistoga, California. Moonbeam had available, at most, \$153,000 to meet total estimated costs for both stations of over \$220,000.

Moonbeam also failed to demonstrate it was financially qualified at the time it filed a new financial certification on March 2, 1992. It failed to provide a financial statement for Mary Constant dated within 90 days of the new financial certification. Also, no new cost estimates were provided to account for a proposed new site.

Moonbeam has failed to demonstrate it has made reasonable efforts to calculate costs of constructing the Calistoga station. This is a prerequisite for establishing financial qualifications. Moonbeam has omitted, or failed to account for, key expenditures

such as the construction of the main studio. It has also failed to adequately budget for legal fees and has failed to demonstrate how its large outstanding past obligation for legal fees and future legal fees will be paid.

Moonbeam has also failed to show it is currently financially qualified. It submitted a balance sheet for Mary Constant as of June 30, 1993, which overstated available assets and understated current liabilities. All of the balance statements submitted were grossly deficient. None even listed long-term liabilities. None detailed current liabilities or assets. None of the financial statement were prepared by an accountant. None were even audited or unaudited. Moonbeam merely presented the self-serving evidence of Mary Constant, which Commission precedent has deemed insufficient to meet a burden on financial issues.

Moonbeam presented Alex Brown account statements which Mary Constant was not sure were complete and which cannot be used for the truth of the matter asserted therein. Ms. Constant claims that, as of the Friday before the hearing, \$90,000 was deposited in the Moonbeam checking account. No independent corroboration of this was offered. The amount is \$5,000 less than the anticipated costs of constructing and operating the station, and Moonbeam has made no showing demonstrating its ability to pay the large outstanding (over \$30,000) legal fees currently due in addition to legal fees which will be incurred in the future.

The record also demonstrates that Ms. Constant's testimony cannot be believed. She was oftentimes evasive and non-responsive (Tr. 356,367,378). More importantly, there were

demonstrated instances of lack of candor and misrepresentations made. The June 30, 1993 financial statement was knowingly inaccurate. She attempted to mislead the Commission about a half million dollar crop loan by indicating it would be paid off in less than a year when, in fact, this was not the case. She further claimed that legal fees were being paid on an ongoing basis when, in fact, less than half of Moonbeam's total legal fees have been paid to date.

WHEREFORE, it is respectfully submitted that the issues be resolved adversely to Moonbeam and that Moonbeam be found unqualified to be a Commission licensee.

Respectfully submitted,

GARY E. WILLSON

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By 
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His Attorney

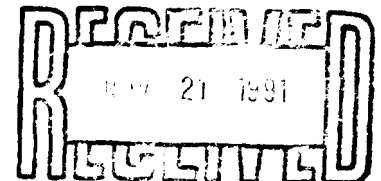
January 21, 1994

APPENDIX 1

OFFICIAL
NOTICE
TAKEN

0992-101-65

HALEY, BADER & POTTS



WASHINGTON, D.C.

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

13 NOV 1991

IN REPLY REFER TO:
8920-CJI

Cynthia A. Siragusa
50 Park Terrace East
Suite 3F
New York, New York 10034

Dear Ms. Siragusa:

Your letter of November 5, 1991, addressed to the Chairman, has been referred to me. Basically, your letter requests the status of a joint settlement request filed on July 31, 1991 in the Eagle, Idaho proceeding.

We anticipate that our legal review of the settlement documents and of the application of the proposed grantee will be completed by the end of this month. A final engineering review of that application should be completed within an additional two weeks, and you should receive notification of the Commission's action on the settlement request by the end of December.

I hope that this explanation will clarify the situation for you.

Sincerely,

Larry D. Eads
Chief, Audio Services Division
Mass Media Bureau

cc: Gerald Stevens-Kittner, Esquire
Lee W. Shubert, Esquire
Dan J. Alpert, Esquire
Denise B. Moline, Esquire

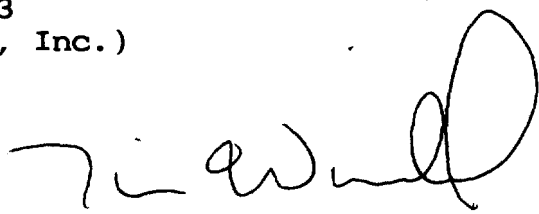
CERTIFICATE OF SERVICE

I, Tim Wineland, in the law offices of Gammon & Grange, P.C., hereby certify that I have sent, this 21st day of January 1994, by first-class, postage-prepaid, U.S. Mail, copies of the foregoing FINDINGS AND CONCLUSIONS OF GARY E. WILLSON ON THE MOONBEAM, INC. FINANCIAL ISSUES to the following:

* The Honorable Edward Luton
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W., Room 225
Washington, D.C. 20554

Hearing Branch, Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7212
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Tim Wineland

* By Hand